

The executive action required for carrying out the following functions must be identified:

~~Dissemination of program information & application requirements~~
~~Selection of permittee candidates~~
~~Review of application for completeness~~
~~Drafting of permits, public notices & fact sheets~~

~~To: DIO
Thru: WHP
From: Stan Herbon, Jr.~~ 5/29
~~Comments on~~

~~NPDES Permit Approval~~
Hawaii, PROGRAM ~~Degradation~~ Application

The submission has arrived in bits and pieces: (1) Request for program together with several pieces of documentation received signed by Director of Public Dept of Health (2) Governor's letter requesting program (3) Statute, AG statement, and implementing regs previously submitted for review, the latter document originally forwarded to AHW Div but never directed to Enf Div or submitted as part of program application. (Also the 3 copies of statutes & regs which should be submitted, never were submitted to my knowledge)

There may be other pieces of info submitted by Hawaii to someone within the Regional Office but no Coherent and Complete submission has been made in one package. Even taking all the documentation submitted at various times (that we are aware of) the submission is inadequate as described on the following pages.

Nowhere is there, in the application, or statement of their philosophy, policies, or intentions in supporting the main goals of the program (except a general "policy on Water Quality Standards" in regs).

~~F~~ WE HAVE NO DESCRIPTION OF ORGANIZATION TASK ASSIGNMENTS TO RUN THE PROGRAM.

- a. Most of the positions shown on manpower sheet are not to be found on org charts. Where are these positions located? If they are in other parts of the organization, how are they directed in program participation? Are there other organizational units, not shown, which have program responsibilities? Are these positions currently filled? If so what duties will they no longer perform upon program approval?
- b. In general, the functional statements of organizational units responsibilities does not provide any significant insight as to NPDES responsibilities. The statements seem to be written with ~~no~~ anticipation of ~~operating~~ operating a NPDES program.
- * could
- c. We require complete description of which organizational units are responsible for various aspects of the program; all program tasks must be covered. We also require clear identification of organizational location of manpower devoted to the program together with identification of supervision over those positions. Also, we must have info on how the Dept relates to the Gov and any other departments having water pollution or water quality functions.

II Program Description is missing

1. There is no "detailed program description" provided. [.. full & complete description... 402(b)]
 - a. In particular, detailed procedures are required meeting the requirements of Subpart C (Application and filing requirements), Subpart D (Public Notice and participation), Subpart G (Monitoring, reporting, & recording procedures) of Section 304(h)(2) as well as Subpart K (Control of disposal of pollutants into wells).
 - b. In general, how does the State intend to carry out its responsibilities?
 - c. Procedures for coordinating activities among various organizational units involved.
 - d. Chart describing the permit processing path from application to issuance is submitted but is too simplified. (Amount of detail required depends upon completeness of narrative procedures supplied)
 - e. ~~Memo of understanding missing and, consequently, procedures for relationship between State and Regional Office are required.~~

- ~~f. Description of State's priorities for permit issuance is missing. Lists of dischargers requiring permits are not, so far as one can determine in any order of priority. There is no indication of how Hawaii will proceed to deal with outstanding permits, or when.~~
- g. Nothing about apps from any dischargers subject to section 306 (New sources)
- h. No indication as to forms to be used.
If State plans to use all EPA forms, there should be a statement to that effect.
If not, copies of any other forms should be submitted. (Also true for formats for such things as permits, fact sheets, public notices etc.)
- i. There is no description of procedures for investigations & enforcement and mere citation of statutory provisions is inadequate. Description should show how they plan to comply with 40 CFR 124.71 (Accept and follow-up of notifications and reports) and 40 CFR 124.73 (Enforcement).
- j. Need procedures for forwarding data to National Data Bank - which dates and when.

III Manpower / Staffing

1. Submission is inadequate with respect to supervisory provision. There is no time allocated for this function.
2. Pay is ~~very~~ low and creates substantial doubt as to States' ability to retain professionals.
3. <sup>non-professional
man-years (Individuals)</sup>
~~Three~~ assigned to "monitoring and surveillance" is inadequate; ~~6 people~~, ~~of which at least 2 should be engineers~~, ~~should be devoted to~~ inspections, sampling, review of self-monitoring data, and non-filer investigations, and case preparation.
4. Clerical support of 1.5 people will be inadequate during the stages of issuing outstanding permits (presumably by Dec 31, 74) and reissuance of EPA permits (unless the latter effort is in fact spread out over a long period of time). ~~Probably will~~ No require at least another 0.5 person for ~~back up till 210 days~~ ^{Clerical support function for Pollution} ~~Investigation & Enforcement Branch.~~
5. ~~Misleading indication~~ ^{No evidence is presented} that staff has sufficient "expertise and experience" as req'd by 40 CFR 124.91(b)2

IV Other

1. ~~States should submit their SSS(s) and any planning process for approval as part of the application, or, if approved, proof of such approval as required by 40 CFR 124.23.~~
2. Provisions for State ADP system to be used for forwarding data to National Data Bank is missing. There is ~~some~~ serious doubt as to the ability of the staff described (3 ~~years~~ ^{many years} for monitoring & surveillance) to handle compliance and self-monitoring requirements without an ADP system to help. In any case, we would require that data to be forwarded to the National Data Bank" [40 CFR 124.23(b) specifically requires "procedures for transmission to the National Data Bank of a complete copy... of any NPDES form received..." Whatever that may be interpreted to mean, we would want App info, permit issuance info, compliance & self-monitoring requirements, and compliance & self-monitoring reports] This could mean by direct entry thru their own terminal, or by submission of cards, tapes, or other means by which we can directly enter their data on our terminal.

3. Needs for, or intended procurement of, sampling and flow measurement equipment to enable compliance monitoring should be detailed.
4. Regime names of members of permit issuing body in order to preclude conflict of interest pursuant to 40 CFR 124.94
5. Since manpower would seem to be drawn from other programs, there should be some indication as to any anticipated impact upon other environmental programs. Since we do not have FY 75 Hawaii Water Strategy draft, we cannot ~~not~~ determine possible impact there.
6. What is the lab program to consist of? What are its capabilities?
7. Some specific details:
 - a. Fact sheets should go to all who request to be on mailing list
 - b. Copies of opps/P.N./Fact sheets/drafts should be forwarded regularly to Federal agencies requesting
 - c. Procedures for modifying/revising permits should include public notice
 - d. Clarify the significance of "State Permit" on submitted discharger lists.

The application does not provide adequate information regarding the following program requirements:

1. Public notices of any modification or revision to a permit as required by 40 CFR ~~125.22(a)2~~^{124.72(a)}.
2. Insurance that no permit shall be issued authorizing discharges ~~to~~ pursuant to 40 CFR 125.41. The language in Hawaii Public Health Regulations Ch 37 Section 15 (c) is ambiguous.
3. There should be specific agreement in the MOU that information forwarded is within the meaning of Section 309 of the Act.
4. Specific description is required of procedures and the capability for the receipt, evaluation, and investigatory followup for possible enforcement or remedial action as described in 40 CFR 124.71
5. Enforcement powers and procedures must be specifically described pursuant to 40 CFR 124.73. Although statutory authority exists, and is confirmed in the Attorney General's Statement, specific description of how the Department will

proceed in enforcement actions, in general and for classes of violations, is missing from the application documentation.

6. A description is required of surveillance and inspection support procedures as detailed in 40 CFR 124.92(a),(b),(c), & (d).
7. A description of the State's program to control the disposal of pollutants into wells, pursuant to 40 CFR 124.80 is required.

In order to have a full and complete description of the program, it is necessary that the entire sequence of procedures (described as individual elements elsewhere in the application documents) be specified. With the clarification which might be achieved by a more detailed flow diagram, such a description should include (1) Application management, including accounting, ~~and~~ review, and ADP coding; (2) permit drafting, taking necessary considerations into account; (3) Review of tentative determinations by concerned government agencies ~~and~~ and the discharger; (4) Public notice and participation; (5) Establishment of final determinations; (6) Compliance monitoring.

There must be submitted, ~~in order to~~ comply with a more complete description of the organization and structure of the units within the Department of Health which will have program responsibilities. In particular, the organizational location of each person assigned program responsibility must be identified; the functional descriptions of organizational units must include the specific program responsibilities of each (and all program tasks must somewhere be so assigned); the relationship of the Department to the Governor and to any other departments having water pollution or water quality functions must be specified.

The enclosed 5 pages represent the net ~~other~~ omissions, taking into account the Hi Regs, HOU DRAFT, and miscellaneous documents submitted. For the most part, the references, on the 1st two pages, to our Regs provides plenty of detail on what they should submit. Items 3, 4, 5, 6 & 7 are not entirely missing but the submission of those is completely inadequate (also fragmental) as can be seen from the references on the work sheet.

A description should be submitted which will demonstrate how the compliance and monitoring functions can be accomplished with the manpower allocation indicated. A description of how federal personnel assigned to the Department of Health under the Intergovernmental Personnel Act (IPA) program will be utilized to achieve program goals and to assist in developing program knowledge and skills within the Department. It is necessary that the application also include some demonstration that employees of the Department of Health, who will have program responsibilities, have sufficient expertise and experience as required by 40 CFR 124.91(b)2.

A plan, for FY 75, should be submitted which will commit the Department to specific achievements required for proper maintenance of a NPDES program. This plan should be further broken down into monthly goals to the extent feasible.

A description of the proposed laboratory program is required. ~~together with an estimate of the~~ Plans for, or needs for, sampling and flow measurement equipment should be specified.

The meaning of the "State Permit" column on the discharger lists provided should be clarified.